

The ALJ's Order sets out findings of fact that are detailed, accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein except as hereinafter noted.

Briefly stated, Robert Taylor had been working about three months as the mobility manager for the respondent's dealership. Claimant's duties included selling durable medical equipment such as power wheelchairs, scooters, lift chairs and vans as well as billing and delivering the equipment. The claimant testified that on January 20, 2006, he was delivering a lift chair to a customer when he experienced a sharp pain in his lower back, buttocks and down his left leg while going up the steps to the mobile home. The customers witnessed the accident and also completed an affidavit regarding the incident. He testified that the customer helped him get the base of the lift chair inside the home. The claimant had a second lift chair delivery and testified that he paid the customer's son to carry the lift chair inside her apartment because he was in extreme pain. Claimant provided an affidavit from the second customer to confirm he was in pain and that he paid to have help delivering the chair.

The claimant returned to the dealership around 5:42 p.m. Claimant testified he told Chet Saporito about his injury. He further testified that he later told Michael Carpino, respondent's principal, that he had hurt his back delivering the chair. The last day the claimant worked for the respondent was February 16, 2006, at which time he resigned in a dispute over his pay.

Mr. Saporito denied claimant ever told him that he had injured his back at work. Mr. Carpino denied claimant ever told him that he had injured his back at work. Robert Pinnegar who helped claimant deliver equipment also denied claimant ever told him that he had injured his back at work. Moreover, Mr. Pinnegar observed claimant leave the dealership the day he resigned and noted claimant carried out his computer and did not appear to be limping.

The claimant sought emergency room treatment that night for his back pain and that was the first time claimant sought treatment for his alleged injury. Mr. Carpino testified that when the hospital called him for authorization to treat claimant, that was the first time he was aware claimant was alleging a work-related injury.

The claimant is required to provide notice of a work-related accident to the respondent within 10 days or show just cause to extend the notice requirement to 75 days.¹ As noted, in this case, there is a major conflict between claimant's preliminary hearing testimony and the testimony of respondent's co-workers and supervisor. Thus, the Board finds the credibility of claimant is of utmost importance in deciding this case.

The Board finds the ALJ, in specifically finding claimant did not provide timely notice, had to conclude that claimant's testimony was not truthful. The ALJ had the opportunity to evaluate both claimant and Mr. Saporito's testimony because they testified in person at the preliminary hearing. And Mr. Carpino and Mr. Pinnegar's testimony likewise refuted

¹ See K.S.A. 44-520.

claimant's allegations regarding notice. In circumstances such as this, where there may be conflicting evidence, the Board finds it is appropriate to give some deference to the ALJ's conclusions. The Board also finds that claimant's testimony is inconsistent and his testimony was contradicted by the testimony of respondent's employees. The Board, therefore, concludes claimant failed to prove he provided respondent with timely notice of the accident.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated July 19, 2006, is affirmed.

IT IS SO ORDERED.

Dated this 29th day of September 2006.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier